REMARKS

Election/Restriction

The Examiner objects to the Applicant's response dated November 20, 2007 as being incomplete for not cancelling the non-elected claims. MPEP § 821.01 does not require cancellation of the non-elected claims, and allows for the "withdrawal" of the non-elected claims. According to that section, the Examiner must withdraw the non-elected claims, and the Applicant has the option of filing a petition or cancelling the claims. Thus, the Applicant contends that the last reply is not incomplete.

Nonetheless, the non-elected claims are cancelled without prejudice.

Prior Art Rejections

Claims 32-55 and claim 64 are before the Examiner. Each claim is rejected by the Examiner. The Attorney for the Applicant had a brief phone call with the Examiner, discussing the possibility of a phone interview. In lieu of that, the Applicant presents the following comments and amendments.

Claims 32-34, 37-41 and 64 were rejected under 35 U.S.C. § 102(b) as anticipated by *Kitami et al.* (US 5,362,530). Further, claims 35-36, 42-43 and 51-55 were rejected under 35 U.S.C. § 103(a) as unpatentable over *Kitami et al.* (US 5,362,530). The Applicant traverses this rejection.

In the original rejection dated September 18, 2007, the Examiner made two comments at page 3 in support of his rejections:

(1) An additional layer in the "core of a multilayered structure" (col. 7, lines 53-54), that is located between the inner and outer walls of the inner layer of the second embodiment (which falls within the scope of the teachings at col. 5, lines 59-51 and col. 7, lines 52-55), corresponds to the claimed barrier layer because any additional layer would serve as a barrier layer because the additional bulk of the layer would further retard the permeation of gas through the multilayer structure as compared with the multilayer structure without the additional layer. (emphasis added)

(2) The barrier layer taught at col. 5, lines 49-51 and col. 7, lines 54-55, that is located between the inner walls of the inner layer of the second embodiment (which falls within the scope of the teachings at col. 5, lines 49-51 [particularly, ". . . may be assembled into the hose . . ."] and col. 7, lines 52-55), also corresponds to the claimed barrier layer. (emphasis added).

With respect to both remarks (1) and (2), the Applicant contends that *Kitami* does not disclose such "an additional layer" or "barrier layer" that is between the inner and outer walls. In *Kitami*, the "inner" and "outer" walls are the only two layers described as making up the core. The inner wall of the core is made of polyamide materials as described at col. 6, lines 9-29. The outer wall of the core is made from a "polymer alloy" of a thermoplastic elastomer (e.g., EPDM/PP blend) or other elastomer/polyolefin blend, described at col. 6, lines 34-52, and Figure 7. There is no layer disclosed in *Kitami* that is between the inner and outer walls.[1]

Applicant, on the other hand, claims a "barrier layer" being "disposed between the first thermoplastic tubular structure and the second thermoplastic tubular structure". While it can be said that *Kitami* discloses that the "outer wall" is "disposed between" the "inner wall" and the "cover layer", there is no disclosure in *Kitami* of a "barrier" as claimed by the Applicant "disposed between" layers—in other words, the outer wall is not a barrier[2] as Applicant claims. Applicant now claims the barrier layer as being "wherein the barrier layer has a carbon dioxide permeability of less than 0.50 $cm^3/100\ cm^2/day/100\ kPa$"[3] in claims 32 and 45. The "outer layer" in *Kitami* is not disclosed as having any carbon dioxide impermeability. *Kitami* discloses that the "inner wall" made from polyamide alloy is used for this purpose, not the "outer layer."

The Examiner originally rejected Claim 37 as being disclosed by *Kitami* at col. 5, lines 38-48. However, Applicant can find no disclosure of a "steel tubular" at col. 5, nor within any portion of *Kitami*. *Kitami* does disclose that there may be a "reinforcing layer" comprising metallic wires that are "braided," and that those wires may be steel, such as at col. 5, line 47. This does not disclose a "steel tubular" as is now claimed "wherein the

[1] See the figure in the Applicant's last response for a representation of *Kitami's* "second embodiment."
[2] See, e.g., col. 13, lines 19-26, "This quality [impermeation] is governed by the thickness of the N6-N11-PO resin used to form an inner wall of the core rather than the materials of the core outer wall and the cover."
[3] Derived from original claim 51 and paragraph [0038]; no new matter is added.

reinforcement structure is a steel tubular."[4]

Applicant contends that the claims, as now amended, are allowable over *Kitami*. Applicant requests that the rejections of claims 32-55 as unpatentable over *Kitami* be withdrawn.

Claim 64 excludes the possibility of there being an adhesive composition a part of the "multilayer pipe" by the language "consisting essentially of." *Kitami* discloses in each embodiment, and as described in manufacturing each embodiment, an adhesive. See, for example, col. 5, lines 52-65; and col. 8, lines 12-15. Applicant requests that this rejection be withdrawn, and claim 64 allowed.

Applicants invite the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been presented to the Examiner's satisfaction. If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket No.: 2004B020.US).

Respectfully submitted,

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Date

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[4] Derived from original claims 37 and 49; no new matter is added.